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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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Federal-State Joint Board on)
Universal Service)
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CC Docket No. 96-45

COMMENTS IN SUPPORT OF
PETITIONS FOR PARTIAL RECONSIDERATION

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Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. §1.429,
The New York Clearing House Association ("NYCHA")¹, MasterCard International
Incorporated ("MasterCard")², and VISA, U.S.A., Inc. ("VISA")³, (collectively the
"Financial Service Providers")⁴ submit the following comments in support of two

¹ NYCHA serves primarily as a clearinghouse through which members settle accounts and present checks and other payment instruments; however it also represents its members on regulatory issues of common concern. The members of The New York Clearing House Association are: The Bank of New York, The Chase Manhattan Bank, Citibank, N.A., Morgan Guaranty Trust Company of New York, Bankers Trust Company, Marine Midland Bank, United States Trust Company of New York, Fleet Bank N.A., European American Bank, and Republic National Bank of New York.

² MasterCard is a membership association whose service marks are used by approximately 23,000 member financial institutions in approximately 150 countries and territories in connection with various payment account access and related services, including credit cards, debit cards, and automated teller machines ("ATMs").

³ Visa's approximately 19,000 member financial institutions use its service marks worldwide in connection with payment systems (including debit and credit cards), check authorization, automated teller machines and related services.

⁴ Collectively, the Financial Service Providers members spend in excess of \$200 million per year on telecommunications services. As large telecommunications users, the Financial Service

petitions for partial reconsideration of the Report and Order (the "Order") filed in the above-captioned proceeding ("Universal Service").⁵ Both petitions, one filed by the Ad Hoc Telecommunications Users Committee ("Ad Hoc")⁶ and one filed by the American Petroleum Institute ("API")⁷ (collectively the "Petitions") request that the Federal Communications Commission ("Commission" or "FCC") reconsider its finding in Paragraph 851 of the Order that "it will serve the public interest to allow telecommunications carriers and providers to make changes to existing contracts" to recover universal service contributions.⁸ For the reasons set forth below, and in Ad Hoc and API's Petitions, this ruling should be reversed.

ARGUMENTS

There are at least two fundamental reasons for reconsidering the ruling that carriers may abrogate their contracts to recover universal service contributions.⁹ First, the costs of universal service are offset by the reductions in

Providers have a direct interest in Commission actions that might impact contract with local exchange and interexchange carriers.

⁵ *Federal-State Joint Board on Universal Service*, Report and Order, 62 Fed. Reg. 32862 (June 17, 1997), ("Order").

⁶ *Petition of the Ad Hoc Telecommunications Users Committee for Partial Reconsideration and Clarification of Report and Order*, (July 17, 1997) ("Ad Hoc Petition").

⁷ *Limited Petition for Reconsideration of American Petroleum Institute* (July 16, 1997) ("API Petition").

⁸ Order at ¶ 851.

⁹ Other valid reasons for reconsidering this finding are set out in both Petitions and will not be repeated here.

access charges created in the Access Reform proceeding.¹⁰ Second, the assumption that the universal service funding requirements were unforeseen, and the public interest would be fostered by allowing contract abrogation, is unsupported and false.

I. The Costs of Universal Service are Offset by Reductions in Access Charges

The Commission, in accordance with the mandates and the spirit of the 1996 Telecommunications Act,¹¹ initiated three crucial proceedings to address competition and the requirements of the Act. One focused on local competition and is not relevant to this pleading.¹² The second dealt with access reform,¹³ and the third – this proceeding -- examined universal service requirements and funding.

Fundamental to both universal service funding and access reform was the desire to eliminate implicit subsidies allegedly used to support universal service,¹⁴ particularly those embedded in access charges, and to address universal service funding directly and explicitly. The principle behind this attempt was to ensure that money intended to support universal service did not

¹⁰ Access Charge Reform, *First Report and Order* 62 Fed. Reg. 31868 (June 11, 1997) (“Access Charge R & O”).

¹¹ Communications Act of 1934, as amended by the Telecommunications Act of 1996, (1996) 47 U.S.C. Section 151 *et. seq.* (the “Act”).

¹² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd. 15499 (1996), vacated in part, *Iowa Utils. Bd. v. FCC*, No. 96-3321 (8th Cir. Jul. 18, 1997).

¹³ Access Charge R & O.

¹⁴ See, e.g., Act § 254(b)(5).

unwittingly and unnecessarily enrich telecommunication carriers.¹⁵ The Commission was largely successful in this effort, and as a result universal service subsidies will be more explicit and access charges will be reduced so that they are closer to cost.

It is puzzling – and distressing – that the Commission imposed *no* requirement in the Access Reform Order¹⁶ that the interexchange carriers (“IXCs”) pass those *savings* through to their users, even as it found that the IXCs could abrogate existing contracts to pass along any *increases*. The result is fundamentally unjust, unreasonable and contrary to the goals of the Act.

II. There Is No Basis for the Commission's Finding that Contract Abrogation is in the Public Interest

The Order states that the assessment on carriers of the universal service requirements created an expense or cost that was not anticipated at the time that existing contracts were signed, and thus, it “would serve the public interest to allow telecommunications carriers and providers to make changes to existing contracts for service in order to adjust for this new cost of doing business.” Based on this limited analysis, the Commission gave carriers *carte blanche* to reopen contracts to pass along additional costs to customers.

The analysis is wrong. First, there may be no additional expense. The Commission has long recognized the need to subsidize rural and high cost

¹⁵ Although it is largely the carriers that pay for access, these charges are ultimately passed through to the public.

¹⁶ Access Charge R & O.

areas.¹⁷ Many of these areas were subsidized by access charges.¹⁸ The FCC recognized this implicit subsidization, and therefore conducted the Access Reform Proceeding and this proceeding on parallel tracks.¹⁹ The net effect for many IXCs, even incorporating in the new categories of subsidies, is a significant cost savings.²⁰ It is illogical to allow carriers to recover “for this new cost of doing business”²¹ when they are in fact likely to experience overall decreases in costs as a result of the Commission’s reforms.

Second, the public interest is not served by allowing the carriers to unilaterally abrogate contracts to the detriment of their customers to take account of exogenous developments when they are not also required to reform those contracts when such developments *benefit* their customers. This action imposes significant costs on entities that have negotiated contracts in the expectation that exogenous costs and benefits would fall where they might – not that the carriers would be able to pass through the former while retaining the latter. Entities that negotiated contracts (particularly in the last year when there was no doubt that universal service costs would be separated) now face new negotiations and

¹⁷ The focus on schools, libraries and rural healthcare providers is new and mandated by the Act. See Act, § 254.

¹⁸ AT&T, MCI and other carriers argued loudly and often that they were paying significant universal service charges through implicit costs that were embedded in access charges. See, e.g. Reply Comments of MCI In Support of Petitions for Partial Reconsideration at 9, (stating that the social goal of subsidiary local service of high cost providers has been achieved through implicit subsidies included in interstate access charges.)

¹⁹ Access Charge R & O; Order.

²⁰ See Ad Hoc’s realistic hypothetical pointing out the cost savings associated with serving a very large business with typical traffic patterns. Ad Hoc Petition at 9.

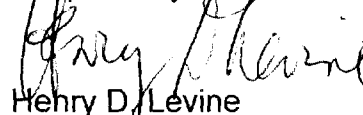
²¹ Order at ¶ 851.

costs. Companies that have built budgets and businesses on the rates established in their contracts will be at best faced with uncertainty and at worst faced with significant budgetary problems.²² Given the expected reduction in access charges that the carriers are not obligated to pass on, this result cannot be in the public interest.

CONCLUSION

The Financial Service Providers urge the Commission to foster the *public* interest by granting the petitions filed by Ad Hoc and API and eliminating any right carriers might have to abrogate existing contracts to pass along universal service costs. In the alternative, the carriers should be required as a condition of such abrogation to flow through the cost *reductions* that accompanied access charge reform and adoption of the universal service order.

Respectfully submitted



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²² Granting such authority also creates market uncertainty (of a kind more often seen in the Third World), itself a material cost.

Certificate of Service

I, Suzanne Takata certify that true and correct copies of the preceding Comments of the Financial Service Providers in Support of Partial Reconsideration of the Report and Order in CC Docket 96-45 were served this 18th day of August, 1997 via hand delivery to the following list. Parties marked with an (*) were served via first class mail.

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August 18, 1997